

**MINUTES
of the
ELEVENTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**June 4, 2007
State Capitol
Santa Fe, New Mexico**

The eleventh meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Senator Cynthia Nava, co-chair, at approximately 1:45 p.m. in Room 307 of the State Capitol in Santa Fe.

Present

Sen. Cynthia Nava, Co-Chair
Veronica Garcia
Pancho Guardiola
Leonard Haskie
Senator Stuart Ingle
Dr. Anna Lamberson
Rep. Larry A. Larrañaga
Sen. Lynda M. Lovejoy
Rep. Ben Lujan
Rep. James Roger Madalena
Kilino Marquez
Rep. W. Ken Martinez
Bud Mulcock
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith
Dr. Moises Venegas
Peter Winograd for Katherine B. Miller

Absent

Rep. Rick Miera, Co-Chair
Sen. Ben D. Altamirano
Gary Bland
Dr. Leslie Carpenter
Cecilia J. Grimes
Robbie Heyman
Sen. Carroll H. Leavell
Elizabeth Marrufo
Norman Suazo
Rep. W.C. "Dub" Williams

Advisory Member

Sen. Vernon D. Asbill

Staff

David Abbey, Legislative Finance Committee (LFC)
Sharon Ball, Legislative Council Service (LCS)
Tim Berry, Public School Facilities Authority (PSFA)
Robert Gorrell, PSFA
Liz Holmes, LCS
Antonio Ortiz, Public Education Department (PED)
Paula Tackett, LCS

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Monday, June 4**Election of Co-Chairs**

On a motion by Senator Smith, seconded by Representative Larrañaga, the task force unanimously voted to confirm the Legislative Council's appointment of Senator Nava and Representative Miera as co-chairs of the task force.

Review of 2006 Task Force and Summary of 2007 Legislation

Ms. Tackett began the review of task force-endorsed legislation for the 2007 session. She noted that the task force recommended the following:

- an omnibus bill that she would be discussing shortly;
- a so-called "money" bill that included:
 - a total of \$81 million for educational technology infrastructure, the Educational Technology Deficiency Correction Fund and replacement of obsolete computers in schools (the bulk of which did not pass);
 - \$30 million for roof repair and replacement (which did not pass);
 - \$8 million for portables to be loaned to school districts (which did not pass); and
 - \$13.3 million to correct deficiencies at the New Mexico School for the Blind and Visually Impaired and the New Mexico School for the Deaf (\$5.5 million of which was appropriated in the capital outlay bill for each institution);
- a facility opportunity fund — which did not pass, but the bulk of which was amended into the omnibus bill and that portion was then vetoed;
- a state-chartered charter school capital funding bill, which did not pass, but the governor's charter school fund bill did pass with \$4.5 million appropriated in the capital outlay bill;
- a school district general obligation bond bill, which did not pass; and
- a contractor at risk bill, which did pass with a number of amendments.

Ms. Tackett added that the legislature and governor funded \$20 million for high-growth and adequacy standards enhancement, of which \$2 million is to be used for energy efficiency or a LEED-certified pilot project. The final version of the task force's "omnibus bill" contained the bulk of the task force's recommendations from the 2006 interim's work. She said that the amended committee substitute, which was the task force's omnibus bill as it evolved, was signed into law by the governor with some line-item vetoes. She added that task force recommendations in the omnibus bill attempted to address testimony that the task force had heard during the 2006 interim, particularly the effects and some unintended consequences of legislation enacted over the past six or seven years.

Directing task force members' attention to the signed, enrolled and engrossed version of Laws 2007, Chapter 366 (Senate Finance Committee Substitute for Senate Bill 395, as

amended), Ms. Tackett discussed the following provisions of the final version of the "omnibus bill":

- exemption from PSFA approval of school construction projects costing \$200,000 or less. She noted that enactment of the bill also allows the Public School Capital Outlay Council (PSCOC) to exempt other classes or types of school construction from PSFA approval;
- the following amendments to the Public School Capital Outlay Act:
 - reduction of offsets from future project awards for special appropriations by 50 percent if the special appropriation is for a project that ranks in the top 150 projects statewide;
 - removal of offset against a local school district for special appropriations for state-chartered charter schools; instead, the offset will be taken against the state-chartered charter school;
 - allowance of PSCOC grant assistance to purchase a privately owned facility that is already in use by a school district if the facility meets the statewide adequacy standards, attendance at the facility is at 75 percent of design capacity and attendance in the schools at which the students would otherwise attend is at 85 percent of design capacity, and the school district and project are otherwise eligible for funding;
 - provision for additional time to correct outstanding deficiencies in the remaining deficiencies correction process, including some roofing projects;
 - an increase in lease reimbursement payments from \$600 to \$700 per MEM with the provision that the per MEM amount and the total limitation are allowed to increase each year with inflation and an extension of the time for the lease payments to 2020 and allowing leased space for administrative use to qualify for the reimbursement; and
 - a requirement that the PSCOC must consider concepts that promote efficient but flexible utilization of space when adopting criteria for grant assistance;
- an amendment to the Public School Capital Improvements Act ("SB 9") to increase the state guarantee from \$60.00 to \$70.00 per mill per unit; and
- amendments to the Public School Buildings Act (House Bill 33) to:
 - allow revenues to be used for project management;
 - increase the period for which a tax may be imposed from five to six years to track with SB 9 and other school district elections;
 - require that future local board bond resolutions contain the capital needs of charter schools based upon the appropriate five-year plans; and
 - require that the proportionate revenue from future taxes approved by the voters be distributed directly to charter schools.

Ms. Tackett explained that the omnibus bill also amends the statute to allow school districts and charter schools to enter into lease agreements under which lease payments are made to the school districts with the proviso that the lease payments cannot exceed the lease reimbursement rate under the Public School Capital Outlay Act plus actual costs incurred by the districts. She explained that, under this change, lease payments may now be retained by the school district and do not have to be considered as cash balances.

Ms. Tackett said that the bill partially implements the constitutional amendment passed by the voters in 2006 whereby lease purchases are not considered debt in the constitutional sense

and thus allow school districts to enter into lease-purchase agreements without having to take them to the voters for approval. She explained that the bill: (1) allows lease-purchase agreements to be funded as projects under the Public School Capital Outlay Act and allows SB 9 state guarantee distributions to be used for the local match; (2) requires the facility that is the subject of the lease payments under a lease-purchase agreement to meet the statewide adequacy standards if a school district seeks reimbursement (if not, the charter school or school district would have to apply for a grant); (3) allows tax revenue from the Public School Capital Improvements Act and the Public School Buildings Act to be used for the lease payments; (4) allows charter schools to be housed in a building subject to a lease-purchase agreement after July 1, 2010; and (5) requires that, upon termination of the charter of a state-chartered charter school, the facility must revert to the local school board rather than to the state if proceeds from local school district general obligation bonds were used to finance the facility.

Ms. Tackett also drew task force members' attention to Laws 2007, Chapter 173 (House Bill 843, as amended, carried by Representative Miera). She noted that, while this measure had not been endorsed by the task force, it essentially "fills in the gaps" in terms of enabling legislation called for by passage of Constitutional Amendment 2, approved by voters in the November 2006 general election, allowing for school districts, charter schools and other government entities to enter into certain types of lease-purchase agreements without being in violation of the debt provisions of Article 9 of the Constitution of New Mexico.

Turning to the language in the bill that the governor had vetoed, Ms. Tackett noted that, since 2003, when all districts became eligible to apply for public school capital outlay funds and the adequacy standards were made operational, the task force has heard testimony that some students live in school districts that may never have a large enough property tax base to be able to finance the building of facilities that can ever go above adequacy standards. In an effort to address this situation, she reminded task force members that they had recommended amendments to the Public School Capital Outlay Act to establish a process to allow a school district to be eligible for the additional award if the PSCOC determined that:

1. the school district is otherwise eligible to apply for a grant under the Public School Capital Outlay Act;
2. the state share for existing grants under the act is 70 percent or greater;
3. the school district's voters have approved a total school property tax rate of at least nine mills over the past three years;
4. at least 70 percent of the students in the district are eligible for free or reduced-fee lunches; and
5. for the next four years, because any local resources of the school district will be spent as the local match for projects, the school district would have no available resources from the state to exceed the statewide adequacy standards.

Ms. Tackett said that the additional award would have equaled anywhere from 10 to 25 percent of the original project cost. In order to fund these costs without using funding appropriated to the Public School Capital Outlay Fund, she reminded task force members that they had recommended an additional source of funding. She explained that enactment of this

measure would have:

1. for the next five years, required that 20 percent of all unreserved, undesignated reverting balances be transferred to the Public School Facility Opportunity Fund at the end of each fiscal year;
2. beginning July 1, 2007, "shaved" three percent of all special legislative appropriations for school construction to be deposited in the Public School Facility Opportunity Fund; and
3. by October 1, 2007, required that 20 percent of unencumbered balances in agency accounts remaining at the end of fiscal year 2007 be transferred to the Public School Facility Opportunity Fund.

In response to a question from the task force regarding the reasons for the governor's veto of the language, Ms. Tackett said that the governor's veto message indicated that he believes that the issues related to establishment of an opportunity fund need additional study, particularly in light of the PSCOC's consideration of adequacy standards modifications.

Ms. Ball said that she would discuss two bills that were passed and signed into law that were not endorsed by the task force but were, nevertheless, very much in line with issues that the task force had supported. Directing task force members' attention to Laws 2007, Chapter 214 (which was Senate Bill 634, carried by Senator Nava), Ms. Ball explained that this measure establishes the Charter School Capital Outlay Fund and provides for distribution of funds for making grants to state-chartered charter schools to assist with meeting the local match for PSCOC projects. She noted that the legislature had appropriated \$4.5 million to fund this distribution. Laws 2007, Chapter 102 (House Bill 1226, as amended), she said, provides the backing of the state for repayment of school district general obligation bonds. She explained that, with these additional procedures in place, school districts may be able to achieve better bond ratings, thereby allowing for lower interest rates. In response to a task force question, Ms. Ball stated that amendments placed on the bill in the House had addressed concerns about potential violation of the debt clause of the state Constitution of New Mexico (in Article 9, Section 8).

Mr. Gorrell directed task force members' attention to a bill endorsed by the task force, Laws 2007, Chapter 141 (House Bill 303, as amended, carried by Representative Larrañaga). This measure, he said, amends the state Procurement Code to provide for "construction manager at risk" contracts in the construction of education facilities. He explained that current law allows construction managers to serve only "not at risk" and therefore are not responsible to the school district for claims for project delays and extended overhead from one or more contractors. He said that passage of this legislation gives school districts an additional tool to choose from as they build their facilities and provides for the possibility of reduced risks assumed by school districts through guaranteed maximum price and delivery schedules.

PSCOC/PSFA Preliminary Data on Fourth Cycle

Mr. Gorrell and Tim Berry, PSFA deputy director, provided task force members with copies of the PSCOC/PSFA 2006 annual report and the PSCOC/PSFA 2006 reference guide,

which provides detailed information on all sources and expenditures of public school capital outlay. Mr. Berry explained that the annual report contains information in particular about the 2006 PSCOC funding cycle. He said that, in 2006, state capital outlay funding for public school construction totaled \$259.2 million, the second-highest annual award. He added, however, that out-of-cycle awards relating to cost overruns and other cost increases totaled \$57.9 million of that amount.

Mr. Gorrell stated that the PSCOC and the PSFA are working closely with school districts to increase project delivery times and thereby minimize the amount of project budget increases due to inflation of construction costs. Mr. Berry added that, since 1999, just under \$1.5 billion has been allocated to a wide range of public school facilities funding programs from supplemental severance tax bonds, severance tax bonds, the general fund and state general obligation bonds.

Directing task force members' attention to two spreadsheets relating to school district rankings based upon the weighted New Mexico Condition Index (NMCI) after the completion of the appeals process for school districts to appeal their respective rankings. Task force members had a number of questions relating to the mechanism for establishing the NMCI and ranking school building needs based upon those rankings.

The task force entertained some discussion on the advance awarded to the Albuquerque Public Schools (APS) and information some of the members had received about APS's repayment of the advance.

Discussion of Work Plan, Possible Creation of Subcommittee(s) and Items for Future Agendas

Senator Nava directed task force members' attention to a copy of the PSCOOTF work plan included in the meeting materials. Members discussed the contents of the work plan in some detail and expressed concerns about a number of issues included and not included in the work plan. In response to a member's question, Ms. Tackett explained that the use of the term "adequacy" was based upon the district court's decision. Representative Martinez raised the issue of uniformity relating to equality or fairness and the need to ensure fairness in the distribution of funds. Ms. Tackett indicated that staff would adjust the work plan to encompass that concern. Task force members also raised the issue of how to deal with developers.

After directing staff to incorporate suggested changes, the task force agreed to accept the proposed work plan and meeting schedule.

There being no further business, the task force adjourned at 4:00 p.m.